

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

VISTA HEALTHPLAN, INC.,
and RAMONA SAKIESTEWA,
on behalf of themselves and
all others similarly situated,

Plaintiffs,

v.

BRISTOL-MYERS SQUIBB CO.,
and AMERICAN BIOSCIENCE, INC.,

Defendants.

Civil Action No. 1:01CV01295 (EGS) (AK)

STIPULATION OF SETTLEMENT

This Stipulation of Settlement ("Settlement Agreement") is made and entered into as of this 27 day of MAY, 2003, between Vista Healthplan, Inc. ("Vista"), one of the named plaintiffs in the above-styled action, individually and as representative of the proposed Third-Party Payor Class¹, and American BioScience, Inc. ("ABI"), one of the named Defendants in this action.

WHEREAS, Vista commenced this action on June 11, 2001, against ABI and Bristol-Myers Squibb Company ("Bristol"), alleging that Defendants delayed the entry of generic paclitaxel from coming to market thereby causing indirect purchasers to pay supra-competitive prices for Taxol and generic paclitaxel;

WHEREAS, Vista's Complaint asserted violations of federal antitrust law, state antitrust and/or unfair business competition statutes and state common law;

¹ Capitalized terms, unless otherwise noted, are defined below in Section I of this Settlement Agreement.

WHEREAS, ABI denies that it has committed any violation of law or engaged in any wrongdoing, denies any and all liability to Vista and the Class, denies that it is subject to jurisdiction in the District of Columbia, and has asserted a number of defenses to Vista's claims;

WHEREAS, since the filing of this Action, Vista and Class Counsel have engaged in an extensive investigation relating to the claims and underlying events alleged in the Complaint. Among other things, Class Counsel have: (1) reviewed and analyzed thousands of documents produced by Bristol, ABI and third parties; (2) engaged in legal research and analysis of a myriad of issues relating to certification, liability, causation and damages; (3) briefed substantive motions on liability and certification; and (4) retained and consulted with economists and other experts with respect to causation and damages allegedly sustained by the Class as a result of the wrongful conduct alleged in the Complaint. Class Counsel are therefore thoroughly familiar with issues of certification, liability, causation and damages with respect to the claims asserted in the Complaint and defenses asserted in ABI's Answer;

WHEREAS, Class Counsel have engaged in extensive discovery, thoroughly investigated the facts of this Action, considered ABI's defenses, and reviewed the pertinent statutory and case law on liability and class certification, Class Counsel have concluded that it would be in the best interests of the Class to enter into this Settlement Agreement with ABI because the Settlement would be a fair, reasonable and adequate resolution of this Action;

WHEREAS, ABI, while continuing to deny vigorously Vista's allegations and any liability with respect to any and all claims asserted in the Complaint, nevertheless recognizes the costs and uncertainties attendant upon further litigation of the claims in this Action, and has therefore concluded that it is desirable to enter into this Settlement Agreement to avoid further expense;

WHEREAS, it is the intention of the Settling Parties that this Settlement resolve, compromise and settle all claims of the Class against ABI as more particularly provided below;

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED, by and among the Settling Parties, through their undersigned counsel, subject to Court approval pursuant to Fed. R. Civ. P. 23(e), to all of the terms and conditions set forth herein, as follows:

I. DEFINITIONS

As used in this Settlement Agreement, the following terms shall have the following meanings:

- A. “ABI” shall mean defendant American BioScience, Inc.
- B. “Action” shall mean *Vista Healthplan, Inc. et al. v. Bristol-Myers Squibb Co. and American BioScience, Inc.*, Case No. 1:01CV01295 (EGS) (D.D.C.).
- C. “Allocation and Distribution Plan” shall mean, subject to Court approval, the following: The Settling Parties agree that the “Net Settlement Fund” shall be allocated and distributed as follows:
 - (1) All Class Members’ timely and valid claims shall be valued as follows: The sum of all Taxol Payments multiplied by seventeen percent (17%). This amount shall be referred to as the Class Member’s “Recognized Loss.”
 - (2) To satisfy the Recognized Loss of Non-J-Code Class Members, thirty thousand dollars (\$30,000) of the Net Settlement Fund (or other amount approved by the Court) shall be set aside as the Preferential Fund.
 - (3) The Recognized Loss of Non-J-Code Class Members and J-Code Class Members shall be paid out of the Net Settlement Fund as follows:

- (a) The Recognized Loss of Non-J-Code Class Members shall first be paid out of the Preferential Fund on a pro-rata basis;
- (b) To the extent that the Recognized Loss of Non-J-Code Class Members is not one hundred percent (100%) satisfied from the Preferential Fund, the unsatisfied amounts of the Recognized Loss of the Non-J-Code Class Members will be paid from the Non-Preferential Fund together with the Recognized Loss of J-Code Class Members on a pro-rata basis.
- (c) If the Recognized Loss of Non-J-Code Class Members is one hundred percent (100%) satisfied from the Preferential Fund, and there remains money in the Preferential Fund, the remaining money will be added to the Non-Preferential Fund for payment of J-Code Class Members' Recognized Loss on a pro-rata basis.
- (d) To the extent that a Class Member used more than one reimbursement or payment system during the Class Period; and further, has valid claims as a Non-J-Code Class Member for only part of the Class Period, that Class Member's claims shall be allocated as follows: (1) the Class Member shall disclose, if applicable, the date when the Class Member switched to or from using a reimbursement or payment system based on a J-Code Medicare Fee Schedule (or any similar reimbursement or payment system), together with any other information relevant to determining the proportion of its Taxol

Payments that were made under a Non-J-Code reimbursement or payment system (or similar system); (2) based on the date and other information disclosed, the Claims Administrator shall calculate the Class Member's actual breakdown of Taxol Payments or, if applicable, calculate the percentage of the Class Period that the Class Member was a Non-J-Code Class Member; and (3) the Class Member will be treated as both a J-Code Class Member and a Non-J-Code Class Member for purposes of Paragraph I.B.(3)(a)-(c) hereof, according to its actual breakdown of Taxol Payments or percentage determined in subsection (2) above, if applicable. For illustration purposes only of calculating the above-mentioned percentage, if a Class Member has a \$1,000,000 Recognized Loss, was a J-Code Class Member from January 1, 1999 through December 31, 2001 and a Non-J-Code Class Member for the rest of the Claim Period, then the Claims Administrator would calculate that the Class Member was a J-Code Class Member for 75% of the Class Period, and would deem that Class Member to have a \$750,000 Recognized Loss as a J-Code Class Member and a \$250,000 Recognized Loss as a Non-J-Code Class Member.

D. "Bristol" shall mean defendant Bristol-Myers Squibb Company.

E. Subject to the Court's approval and for the purposes of this Settlement Agreement only, the undersigned agree and consent to the certification of the following Third-Party Payor Class [hereinafter "Third-Party Payor Class" or "Class"]:

All "Third-Party Payors" (defined immediately below) in the United States which, at any time from January 1, 1999 through December 31, 2002, paid, in whole or in part, for Taxol and/or generic paclitaxel in the United States. Excluded from the Class are Defendants, their subsidiaries, affiliates, officers and directors, and government entities.

"Third-Party Payor" shall mean any entity that (i) is a party to a contract, issuer of a policy, or sponsor of a plan, which contract, policy or plan provides coverage for the administration of Taxol or generic paclitaxel to natural persons, and (ii) is also at risk, pursuant to such contract, policy or plan, to pay or reimburse all or part of the costs of providing such coverage.

A self-funded health benefit plan for employees of a government entity that satisfies the definition of "Third-Party Payor" shall not be considered a "government entity."

F. "Class Counsel" shall mean all counsel representing Vista and the Class in this Action and all counsel representing Third-Party Payor Class Representatives in the Related Actions.

G. "Class Period" shall mean January 1, 1999 through December 31, 2002.

H. "Defendants" shall mean Bristol and ABI.

I. "Direct Action" shall mean *Oncology & Radiation Assocs., P.A. v. Bristol-Myers Squibb Co. and American Bioscience, Inc.*, Case No. 1:01CV02313 (EGS) (D.D.C.).

J. "J-Code Class Member" shall mean any member of the Class that utilized a reimbursement or payment system for Taxol Payments during all or part of the Class Period that employed, or was based upon, a J-Code Medicare Fee Schedule (or any similar reimbursement or payment system). Nothing herein prevents a Class Member who utilized more than one

reimbursement or payment system during the Class Period from being considered both a J-Code Class Member and a Non-J-Code Class Member, and therefore having its claims satisfied accordingly under the Allocation and Distribution Plan.

K. "J-Code Medicare Fee Schedule" shall mean a fee schedule used by or authored by the Health Care Financing Administration, Centers for Medicare & Medicaid Services, and/or Medicare that employed a Code of "J9265" to represent Taxol or generic paclitaxel and listed fees for J9265 that did not change during the Class Period.

L. "Net Settlement Fund" shall mean the amount of the Settlement Fund to be distributed to members of the Class (the amount of money referred to in Paragraph III.(b)(vii)).

M. "Non-J-Code Class Members" shall mean those members of the Class which are not J-Code Class Members. Nothing herein prevents a Class Member who utilized more than one reimbursement or payment system at the same time during the Class Period from being considered both a J-Code Class Member and a Non-J-Code Class Member, and therefore having its claims satisfied accordingly under the Allocation and Distribution Plan.

N. "Non-Preferential Fund" shall mean the Net Settlement Fund less the amount of money approved by the Court to be included in the Preferential Fund, which the Court shall set aside to satisfy the claims of J-Code Class Members, in accordance with the Allocation and Distribution Plan.

O. "Preferential Fund" shall mean thirty thousand dollars (\$30,000) or other amount that is set aside by the Court from the Settlement Fund to satisfy the claims of Non-J-Code Class Members, in accordance with the Allocation and Distribution Plan.

P. "Releasees" shall mean ABI and its present and former direct and indirect parents, subsidiaries, divisions, partners and affiliates, and their respective present and former officers, directors, employees, managers, agents, attorneys and legal representatives, and the predecessors, successors, heirs, executors, trustees, administrators and assigns of each of the foregoing. As used in this Paragraph, "affiliates" means entities controlling, controlled by or under common control with a Releasee.

Q. "Releasers" shall mean each Third-Party Payor Class Member on its own behalf and on behalf of, and including, its respective present and former direct and indirect parents, subsidiaries, divisions, partners and affiliates, their respective present and former officers, directors, employees, managers, agents, attorneys and legal representatives, and the predecessors, successors, heirs, executors, trustees, administrators and assigns of each of the foregoing. As used in this Paragraph, "affiliates" means entities controlling, controlled by or under common control with a Releasee.

R. "Settlement Fund" or "Settlement Amount" shall mean the sum of one hundred and eighty-five thousand dollars (\$185,000) that ABI will pay into the Escrow Account, plus all accrued income and interest.

S. "Settling Parties" shall mean Vista and ABI.

T. "Third-Party Payor" shall mean any entity that (i) is a party to a contract, issuer of a policy, or sponsor of a plan, which contract, policy or plan provides coverage for the purchase or administration of Taxol or generic paclitaxel to natural persons, and (ii) is also at risk, pursuant to such contract, policy or plan, to pay or reimburse all or part of the costs of providing such coverage.

U. “Third-Party Payor Class Member” or “Class Member” shall mean any entity falling within the definition of the Class which has not timely and validly excluded itself from the Class in accordance with the procedure to be established by the Court.

V. “Third-Party Payor Settlement Fund Escrow Account” shall mean the escrow account set up at Gibraltar Bank, FSB, or another financial institution that the Settling Parties mutually agree upon, by virtue of the escrow agreement entered into by the Settling Parties.

W. “Taxol Payments” shall mean the dollar amount of purchases of the brand name prescription drug Taxol and generic paclitaxel, less any reimbursements, rebates or discounts, during the Class Period. For the purposes of this Settlement Agreement, a Third-Party Payor “purchases” Taxol or generic paclitaxel if they paid or reimbursed some or all of the purchase price.

X. “TPP Total Aggregate Taxol Payments” shall mean the sum of all Taxol Payments reported on all timely and validly filed Claim Documentation, timely and validly filed proof of claims, notices of exclusion (or reasonable estimates of the foregoing if necessary) and any estimates or determinations by counsel or the Court of Taxol Payments required under this Settlement Agreement of members of the LDR and RK Groups.

Y. “Related Actions” shall mean: (i) *Plumbers & Pipefitters Local 572 Health & Welfare Fund, et al. v. Bristol-Myers Squibb Company*, Case No. 00-C-2525, pending in the Circuit Court for the State of Tennessee, Twentieth Judicial District; (ii) *Dzierlatka v. Bristol-Myers Squibb Co. and American Bioscience, Inc.*, Case No. BC276039, pending in the Superior Court of the State of California, County of Los Angeles, Central Judicial District; and (iii) *Donnelly v. Bristol-Myers Squibb Company*, Case No. 01-CV-3785, pending in the District Court of Johnson County, Kansas.

Z. “Third-Party Payor Lead Counsel” or “Lead Counsel” shall mean the law firm of Hanzman & Criden, P.A.

AA. “Third-Party Payor Opt Out” shall mean any Third-Party Payor falling within the definition of the Class that has timely and validly excluded itself from the Class in accordance with the procedures to be established by the Court. If necessary to effectuate any part of this Settlement Agreement, the Settling Parties agree to use any and all reasonable means (including issuing subpoenas) to calculate the Taxol Payments for, and gather any other pertinent information related to, for each Third-Party Payor Opt Out.

BB “Third-Party Payor Class Representatives” shall mean the named plaintiffs in this Action and the Related Actions.

CC. “United States” shall mean the United States of America and its territories and possessions.

II. SETTLEMENT FUND

A. Settlement Consideration

Subject to the provisions hereof, and in full, complete, and final settlement of this Action as provided herein, ABI agrees to pay by wire transfer one hundred and eighty-five thousand dollars (\$185,000) into the Third-Party Payor Settlement Fund Escrow Account (“Escrow Account”) by the later of October 15, 2003, or (b) the date which is five (5) business days prior to the date that Lead Counsel informs ABI’s Counsel is the date upon which monies from the Settlement Fund are ready to be distributed to the Class; but in no event later than February 15, 2004. The Escrow Account shall be established and administered pursuant to an escrow agreement in a form satisfactory to the parties hereto. The Settlement Fund may be invested at the direction of Lead Counsel in United

States Treasury Bills, United States Treasury Notes, or other instruments insured or guaranteed by the full faith and credit of the United States (or other instruments, accounts or funds permitted by the escrow agreement), and any interest or income earned thereon shall become part of the Settlement Fund.

As security for the future payment of \$185,000, ABI agrees to pledge stock with a market value of not less than \$250,000 owned by it in its subsidiary, American Pharmaceutical Partners, Inc., pursuant to a securities account pledge agreement containing terms agreed to by the parties, to be executed by the parties no later than ten (10) calendar days after preliminary approval of the settlement between the parties is granted by the Court.

B. Qualified Settlement Fund

The Escrow Account is intended by the parties hereto to be treated as a “qualified settlement fund” for federal income tax purposes pursuant to Treas. Reg. § 1.468B-1, and to that end the parties hereto shall cooperate with each other and shall not take a position in any filing or before any tax authority that is inconsistent with such treatment. Whether or not Final Approval of this settlement has occurred, and whether or not the Escrow Account qualifies as a qualified settlement fund within the meaning of Treas. Reg. § 1.468B-1, Lead Counsel shall cause to be paid from the Escrow Account any taxes or estimated taxes due on any income earned on the funds in the Escrow Account and all related costs, expenses and penalties, including any tax liabilities or penalties imposed on ABI with respect to such income. Third-Party Payor Class Members shall have no recourse against ABI for such amounts paid out of the Settlement Fund. If amounts received by the Third-Party Payor Class Members, or any portion thereof, are construed to be income, it is their sole responsibility to

pay taxes on the amount construed to be income, plus any penalties or interest, and ABI shall have no liability for such taxes, penalties or interest.

C. All Claims Satisfied by Settlement Fund

Each Class Member shall look solely to the Settlement Fund for settlement and satisfaction, as provided herein, of all claims released by Third-Party Payor Class Members pursuant to this Settlement Agreement. Except as provided by order of the Court pursuant to this Settlement Agreement, no Third-Party Payor Class Member shall have any interest in the Settlement Fund or any portion thereof.

D. Production to Third Parties

Vista and Class Counsel shall not voluntarily provide work product, expert or consultant analyses, IMS data, or any other documents related to this Action to any Third-Party Payor Opt Out or to any other person, and shall prohibit, to the extent permissible, any experts previously retained by Class Counsel in connection with this Action from accepting an engagement in any action based on the same subject matter of this Action.

E. Dismissal of Related Actions

Upon Final Approval (as defined in Paragraph IV.D.), Lead Counsel shall use all reasonable means to seek dismissal with prejudice of all Related Actions with all parties in those actions responsible for their own fees and costs associated with those actions, without prejudice of the plaintiffs in those actions participating in the settlements reached in this Action or the States Action.

F. Dismissal of Ramona Sakiestewa's Claims Without Prejudice

Upon Final Approval (as defined in Paragraph IV.D.), the parties agree and stipulate pursuant to Rule 41(a)(1) that Plaintiff Ramona Sakiestewa shall dismiss all of her claims in the Action without prejudice to her participating in the settlement reached in the States Action.

III. DISTRIBUTION OF THE SETTLEMENT FUND

The Settlement Fund shall be distributed as follows or as otherwise ordered by the Court:

- (a) Prior to this Settlement Agreement becoming final pursuant to Paragraph IV.D. below:
 - (i) disbursements for the costs of administration of the Settlement Fund may be made by the Escrow Agent with notice to Lead Counsel and ABI;
 - (ii) disbursements for the payment or reimbursement of any taxes (including any estimated taxes, interest or penalties) due or imposed, as a result of income earned by the Settlement Fund shall be made promptly by the Escrow Agent pursuant to the Escrow Agreement with notice of such disbursements provided to Lead Counsel and ABI; and
 - (iii) disbursements for the expense of Class notice may be made at the direction of Lead Counsel pursuant to the settlement documentation and Court order with notice of such disbursements provided to ABI.

(b) If this Settlement Agreement becomes final pursuant to the provisions of Paragraph IV.D. below, the Settlement Fund shall be distributed as follows:

- (i) first, disbursements for the costs of administration of the Settlement Fund may be made by the Escrow Agent with notice of such disbursements provided to Lead Counsel;
- (ii) second, disbursements for the payment or reimbursement of any taxes (including any estimated taxes, interest or penalties) due, as a result of income earned by the Settlement Fund shall be made promptly by the Escrow Agent pursuant to the Escrow Agreement with notice of such disbursements provided to Lead Counsel;
- (iii) third, any incentive award determined by the Court for services rendered to the Class by the Third-Party Payor Class Representatives shall be distributed to the Third-Party Class Representatives;
- (iv) fourth, reasonable litigation and settlement expenses incurred by the settlement administrator and any other third-parties, as determined by the Court, shall be distributed to the settlement administrator and such other third-parties;
- (v) fifth, any attorney fee awarded by the Court to Class Counsel pursuant to Paragraph V.A. below, together with reasonable

out-of-pocket expenditures by Class Counsel as determined by the Court, shall be paid to Lead Counsel for distribution to Class Counsel at its sole discretion;

(vi) sixth, disbursements for the expense of Class notice may be made at the direction of Lead Counsel pursuant to the settlement documentation and Court order; and

(vii) seventh, the remaining amount of the Settlement Fund shall be distributed to members of the Class.

(c) In the event that the Settlement Agreement does not receive Preliminary or Final Approval, is terminated, becomes null and void for any reason or does not become final pursuant to Paragraph IV.D. below (a "Terminating Event"), the Escrow Agent shall upon the expiration of ten (10) days, subject only to the expiration of any time deposit investment(s) not to exceed ninety days, following receipt by the Escrow Agent and Lead Counsel of written notice signed by counsel for ABI stating that the Settlement Agreement has been subject to a Terminating Event and without order of the Court, return the Settlement Fund including interest and income earned, less (i) the notice costs incurred up to the date of return and (ii) any fees and/or expenses incurred in maintaining the Escrow Account, including taxes and fees pursuant to the Escrow Agreement, to ABI.

- (d) ABI and its counsel shall have no liability or responsibility whatsoever with respect to disbursements or distributions from, or administration of, the Settlement Fund.

IV. APPROVAL AND NOTICE

A. Motion for Preliminary Approval

As soon as possible and in no event later than ten (10) business days after execution of this Settlement Agreement, Class Counsel shall submit to the Court a motion for preliminary approval of the settlement set forth in this Settlement Agreement.

B. Notice to End-Payor Class

In the event that the Court preliminarily approves the settlement set forth in this Settlement Agreement, Class Counsel shall, in accordance with Rule 23 of the Federal Rules of Civil Procedure and the Court's order, provide those members of the Class who have been identified by reasonable means with notice by first class mail of the pendency of this Action, the conditional certification of the Class and the date of the hearing scheduled by the Court to consider the fairness, adequacy and reasonableness of the proposed settlement. Class Counsel shall take all necessary and appropriate steps to ensure that such notice is provided in accordance with the order of the Court. Notice to the members of the Class shall also be given by publication as ordered by the Court, and by publication on the web site established by Class Counsel and/or, subject to Court approval, on the Court's web site.

C. Motion for Final Approval and Entry of Final Judgment

If the Court preliminarily approves this Settlement Agreement, Class Counsel shall submit a motion for final approval of this Settlement Agreement by the Court, after appropriate Court-approved notice to the Class, and shall seek entry of an order and final judgment:

1. fully and finally approving, the settlement contemplated by this Settlement Agreement, and its terms as being a fair, reasonable and adequate settlement within the meaning of Rule 23 of the Federal Rules of Civil Procedure and directing its consummation pursuant to its terms and conditions;
2. directing that this Action be dismissed with prejudice and, except as provided for herein, without costs;
3. discharging and releasing the Released Parties from all Released Claims;
4. reserving exclusive jurisdiction over the settlement and this Settlement Agreement, including its administration and consummation;
5. directing that the judgment of dismissal be final and appealable; and
6. directing that for a period of five (5) years, the Court shall maintain the records of those members of the Class who have timely and validly excluded themselves from the Class and that a certified copy of such records shall be provided to ABI at its request.

D. Finality

This Settlement Agreement shall become final upon the occurrence of all of the following (“Final Approval”):

1. The settlement has been approved by the Court pursuant to Rule 23(e) of the Federal Rules of Civil Procedure;
2. Entry, as provided for in Paragraph IV.C. above, is made of the final judgment of dismissal;
3. ABI has not availed itself of any right to terminate this Settlement Agreement; and
4. The time for appeal from the Court's approval of this Settlement Agreement and entry of a final judgment as described in Paragraph IV.C. above has expired, or if appealed, either (i) such appeal has been dismissed prior to resolution by an appellate court; or (ii) approval of this Settlement Agreement and the final judgment has been affirmed in its entirety by the court of last resort to which such appeal has been taken and such affirmance has become no longer subject to further appeal or review.

V. APPLICATION FOR ATTORNEY FEES

A. Attorney Fees

Understanding that the award of attorney fees for Class Counsel is a matter committed to the sound discretion of the Court, ABI will not object to Class Counsel's request to the Court for a reasonable attorney fee not to exceed the sum of thirty-three and one-third percent (33 1/3 %) of the Settlement Fund.

B. Payment of Expenses

ABI shall not be liable for any of the expenses of the litigation of this Action or the Related Actions, including without limitation attorneys' fees, fees and expenses associated with the provision

of notice to the members of the Class, fees and expenses incurred in administering the Escrow Account, fees and expenses of expert witnesses and consultants, and expenses associated with discovery, motion practice, hearings before the Court and appeals; except as provided in Paragraph VII. All such expenses as are approved by the Court shall be paid out of the Settlement Fund.

VI. RELEASES AND RESERVATION OF CLAIMS AND RIGHTS

A. Releases

In addition to the effect of any final judgment entered in accordance with this Settlement Agreement, in the event that the Court gives Final Approval to this Settlement Agreement, each Releasee shall be released and forever discharged from all manner of claims, demands, actions, suits, causes of action, damages whenever incurred, and liabilities of any nature whatsoever, including without limitation costs, expenses, fines, penalties and attorneys' fees, known or unknown, suspected or unsuspected, asserted or unasserted, in law or in equity, which Releasors or any of them, whether directly, representatively, derivatively, or in any other capacity, whether or not they make a claim on or participate in the Settlement Fund, ever had, now have or hereafter can, shall or may have, relating in any way to any conduct, act or failure to act, prior to the date of this Settlement Agreement, concerning the purchase, sale, or pricing of Taxol or generic paclitaxel, or relating to any conduct, act or failure to act, alleged in this Action including, without limitation, any such claims that have been asserted or could have been asserted based on the facts alleged in the operative complaint in this Action against the Releasees; provided however, that nothing herein shall act as a release of any claim that does not arise from or relate to the facts, matters, transactions, events, occurrences, acts, disclosures, statements, omissions, or failures to act set forth or alleged by Vista in this Action. The claims covered by the foregoing release are referred to herein collectively as the

"Released Claims." Each Releasor hereby covenants and agrees that it shall not, hereafter, seek to establish liability against any Releasee based in whole or in part on any Released Claims.

In addition, each Releasor hereby expressly waives and releases, upon this Settlement Agreement becoming final, any and all provisions, rights, benefits conferred by section 1542 of the California Civil Code, which provides:

A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor;

and any law or any state or territory of the United States, or principle of common law, which is similar, comparable or equivalent to section 1542 of the California Civil Code. Each Releasor may hereafter discover facts other than or different from those which he, she or it knows or believes to be true with respect to the Released Claims, but each Releasor hereby expressly waives and fully, finally and forever settles and releases, upon this Settlement Agreement becoming final, the Released Claims, whether any Released Claim is known or unknown, suspected or unsuspected, contingent or non-contingent, concealed or hidden, without regard to the subsequent discovery or existence of such different or additional facts. Each Releasor also hereby expressly waives and fully, and finally and forever settles any and all Released Claims it may have under § 17200, *et seq.*, of the California Business and Professions Code.

B. Reservation of Claims

The Third-Party Payor Class Members intend by this Settlement Agreement to settle with and release only the Releasees, and the parties do not intend this Settlement Agreement, or any part hereof, to release or otherwise affect in any way any rights Third-Party Payor Class Members have

or may have against any other party or entity whatsoever other than the Releasees. In addition, the releases set forth in Paragraph VI.A. above shall not release any claims for product liability, breach of contract, breach of warranty, personal injury or similar claims unrelated to the subject matter of the Released Claims.

C. Reservation of Rights

The parties hereto agree that this Settlement Agreement, whether or not it becomes final pursuant to Paragraph IV.D. above, and any and all negotiations, documents and discussions associated with it shall be without prejudice to the rights of any party; shall not be deemed or construed to be an admission or evidence of any violation of any statute or law, of any liability or wrongdoing by ABI, of the District of Columbia Court's having jurisdiction over ABI or of the truth of any of the claims or allegations contained in the complaint or any other pleading; and evidence thereof shall not be discoverable or used directly or indirectly by the Class or any third party, in any way (except that the provisions of this Settlement Agreement may be used by the parties to enforce the provisions of the Settlement Agreement), whether in this Action, the Related Actions, or in any other action or proceeding. The parties expressly reserve all their rights if this Settlement Agreement does not become final substantially in accordance with the terms of this Settlement Agreement.

VII. TERMINATION

A. Effect of Exclusion by Class Members.

1. If, after notice of the Settlement is sent to the Class, Class Members with aggregate Taxol Payments exceeding a percentage set forth in a confidential letter from Lead Counsel to ABI's counsel ("Confidential Percentage") of the TPP Total Aggregate Taxol Payments exclude themselves from the Class,

then ABI may, at its option terminate this Settlement Agreement. The parties agree to negotiate in good faith to determine whether the Confidential Percentage has been exceeded. If the parties cannot resolve the matter through negotiation by September 15, 2003, then the parties agree to submit the issue to the Court by September 22, 2003, and shall request that the Court resolve the issue by October 3, 2003. The Court's resolution of this issue shall be final and all parties waive any right to appeal.

2. To be effective, ABI's right to terminate this Settlement Agreement pursuant to Paragraph VII.A. must be exercised by giving written notice to Lead Counsel within five (5) business days of: (i) the Settling Parties agreeing in writing that the percentage in the confidential letter has been exceeded, or, if applicable, (ii) the Court's determination of the matter.

B. Effect of Disapproval

If the Court does not finally approve this Settlement Agreement in its entirety, or if such approval is materially modified or set aside on appeal, or if the Court does not enter the final judgment substantially in the form provided for in Paragraph IV.C. above, or if the Court enters the final judgment and appellate review is sought and, on such review, such final judgment is not affirmed or is affirmed with material modifications, then this Settlement Agreement may be terminated upon the election of ABI or Lead Counsel. A modification or reversal on appeal of any amount of Class Counsel's fees and expenses awarded by the Court from the Settlement Fund shall not be deemed a modification of all or a part of the terms of this Settlement Agreement or such final judgment and shall not give rise to any right of termination.

C. Termination

If this Settlement Agreement is terminated pursuant to Paragraphs VII.A. or VII.B above, or does not become final pursuant to Paragraph IV.D. above for any reason, then the Settlement Fund, net of (i) taxes paid or reimbursed or due to be paid or reimbursed on the Settlement Fund, (ii) the costs paid or incurred for administering the Settlement Fund, and (iii) the expenses paid or incurred for providing notice to the Class, (a) shall be returned to ABI; (b) the Settlement Agreement shall be of no force or effect, except for payment of notice and administrative fees and costs from the Settlement Fund; (c) any release pursuant to Paragraph VI.A. shall be of no force or effect; and (d) the parties shall request that the Court vacate any order certifying the Class. The parties expressly reserve all of their rights if this Settlement Agreement is terminated or does not become final.

VIII. MISCELLANEOUS

A. Reasonable Best Efforts to Effectuate This Settlement Agreement

The Settling Parties and their counsel agree to undertake their reasonable best efforts, including all steps and efforts contemplated by this Settlement Agreement and any other steps and efforts that may be necessary or appropriate, by order of the Court or otherwise, to carry out the terms of this Settlement Agreement.

B. No Admission

Nothing in this Settlement Agreement shall be construed as an admission in any action or proceeding of any kind whatsoever, civil, criminal or otherwise, before any court, administrative agency, regulatory body or any other body or authority present or future, by ABI including, without limitation, that ABI has engaged in any conduct or practice that violates any antitrust statute, unfair and deceptive trade practices statute or other law or that ABI is subject to jurisdiction in the District

of Columbia. Neither this Settlement Agreement, nor any negotiations preceding it, nor any proceedings undertaken in accordance with the terms set forth herein, shall be construed as or deemed to be evidence of or an admission or concession by ABI as to the validity of any claim that Third-Party Payor Class Representatives or the Class have or could have asserted against it or as to any liability by it, which liability is hereby expressly denied and disclaimed by ABI. Neither this Settlement Agreement, nor any of its provisions, nor any statement or document made or filed in connection herewith, shall be filed, offered, received in evidence or otherwise used in any action or proceeding or any arbitration, except in connection with the parties' application for approval or enforcement of this Settlement Agreement and all proceedings incident thereto, including requests for attorneys' fees, costs and disbursements and compensation to the Class.

C. Revision of Certain Dates

Several dates in this Settlement Agreement are based on the assumption that the Court approves plaintiff's motion for preliminary approval which shall request that all Proof of Claims and Notices of Exclusions be mailed to the Settlement Administrator and/or counsel no later than August 20, 2003. If the Court orders a later deadline for the mailing of such materials, then the parties agree to revise any dates herein, as necessary due to the changed date, in a writing signed by both parties. Furthermore, the parties agree, if it becomes reasonably necessary under the circumstances, to work together in good faith to revise dates herein by a writing signed by both parties.

D. Stay and Resumption of Discovery

The Settling Parties agree, subject to approval of the Court, that discovery shall be stayed except to the extent discovery is necessary with respect to Third-Party Payor Opt Outs and for purposes of administering and consummating this Settlement Agreement. In the event that this

Settlement Agreement is not approved by the Court or the settlement does not become final pursuant to Paragraph IV.D., or is terminated pursuant to Paragraphs VII.A. or VII.B. above, discovery will resume in this Action and the Related Actions in a reasonable manner to be approved by the Court.

E. Consent to Jurisdiction

ABI, Third-Party Payor Class Representatives and Class Counsel hereby irrevocably submit to the exclusive jurisdiction of the Court only for the specific purpose of any suit, action, proceeding or dispute arising out of or relating to this Settlement Agreement, the applicability of this Settlement Agreement or any issue related to fees and costs. ABI does not waive and specifically preserves its objection to the Court exercising jurisdiction over it in the event the Settlement Agreement is not approved by the Court, the settlement does not become final pursuant to Paragraph IV.D. or the settlement is terminated pursuant to Paragraphs VII.

F. Resolution of Disputes: Retention of Jurisdiction

Any disputes between or among ABI and any Class Members concerning matters contained in this Settlement Agreement shall, if they cannot be resolved by negotiation and agreement, be submitted to the Court. The Court shall retain jurisdiction over the implementation and enforcement of this Settlement Agreement.

G. Enforcement of Settlement Agreement

Notwithstanding Paragraph VIII.B. above, this Settlement Agreement may be pleaded as a full and complete defense to any action, suit or other proceeding that has been or may be instituted, prosecuted or attempted with respect to any of the Released Claims and may be filed, offered and received into evidence and otherwise used for such defense.

H. Binding Effect

This Settlement Agreement shall be binding upon, and inure to the benefit of, the successors and assigns of the parties hereto. Without limiting the generality of the foregoing, each and every covenant and agreement herein by Third-Party Payor Class Representatives and their counsel shall be binding upon all settling Class Members.

I. Authorization to Enter Settlement Agreement

Counsel for ABI represents that it is fully authorized to enter into and to execute this Settlement Agreement on behalf of ABI. Lead Counsel represents that it is fully authorized to conduct settlement negotiations with defense counsel on behalf of the Third-Party Payor Class Representatives and Class Counsel, and to enter into, and to execute, this Settlement Agreement on behalf of the Class and Class Counsel, subject to Court approval pursuant to Fed. R. Civ. P. 23(e).

J. No Party Is the Drafter

None of the Settling Parties shall be considered to be the drafter of this Settlement Agreement or any provision hereof for the purpose of any statute, case law or rule of construction that would or might cause any provision to be construed against the drafter hereof.

K. Choice of Law

All terms of this Settlement Agreement shall be governed by and interpreted according to the substantive laws of the State of New York without regard to its choice of law or conflict of laws principles.

L. Amendment; Waiver

This Settlement Agreement shall not be modified in any respect except by a writing executed by all the parties hereto, and the waiver of any rights conferred hereunder shall be effective only if

made by written instrument of the waiving party. The waiver by any party of any breach of this Settlement Agreement shall not be deemed or construed as a waiver of any other breach, whether prior, subsequent or contemporaneous, of this Settlement Agreement.

M. Execution in Counterparts

This Settlement Agreement may be executed in counterparts. Facsimile signatures shall be considered as valid signatures as of the date thereof, although the original signature pages shall thereafter be appended to this Settlement Agreement and filed with the Court.

N. Integrated Agreement

This Settlement Agreement, along with the above-referenced confidential letter and escrow agreement, contains an entire, complete, and integrated statement of each and every term and provision agreed to by and between the Settling Parties.

O. Notice

Any and all notices intended for any party of this Settlement Agreement shall be in writing and shall be sent by fax and postage prepaid mail as follows:

To Vista, the Class or Lead Counsel:

Kevin Love, Esq.
Hanzman & Criden, P.A.
220 Alhambra Circle, Suite 400
Coral Gables, FL 33134
(Fax: 305-357-9050)

To ABI:

Carlton Varner, Esq.
Sheppard, Mullin, Richter & Hampton, LLP
333 South Hope Street, 48th Floor
Los Angeles, CA 90071
(Fax: 213-620-1398)

P. Construction

This Settlement Agreement shall be construed and interpreted to effectuate the intent of the parties, which is to provide, through this Settlement Agreement, for a complete resolution of the Released Claims with respect to the Releasees.

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IN WITNESS WHEREOF, the parties hereto, through their fully authorized representatives,
have executed this Settlement Agreement as of the date first herein above written.

Carlton A. Varner
Carlton A. Varner, Esq.
SHEPPARD, MULLIN, RICHTER & HAMPTON, LLP
333 South Hope Street, 48th Floor
Los Angeles, CA 90071

5/27/03
Date

COUNSEL FOR AMERICAN BIOSCIENCE, INC.

Kevin B. Lovc
Kevin B. Lovc, Esq.
Michael Criden
Hanzman & Criden, P.A.
220 Alhambra Circle, Suite 400
Coral Gables, FL 33134

5/27/03
Date

**THIRD-PARTY PAYOR LEAD COUNSEL AND
COUNSEL FOR VISTA HEALTHPLAN, INC.**

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May 27, 2003 (12:18PM)